

Check list for filing a Zoning Board of Appeals
Variance Request

- Let the Zoning Board of Appeals secretary review the “denial” letter and the Zoning Board of Appeals application packet to ensure that the packet is complete.
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Application:

- Fill out application form (Page 1 thru 4) All other papers applicant should keep for their information.
- Submit appropriate filing fee – check made out to the City of Marlborough, and given to the Zoning Board of Appeals secretary.
- Form 3 - Request an abutters list. Go to the Assessor’s Office – cost is \$30.00 (make check payable to the City of Marlborough)

For Zoning relief (Variance) – 300 ft. radius

For Special Permit – 400 ft. radius

- Plan submittal – see #6 of the information sheets and additional information about plan submittal checklist is also in the application.
- If application packet is complete, 1 copy goes to the City Clerks office to be stamped in and proof of submittal will be brought back to the Zoning Board of Appeals.

Please provide 8 copies of the entire packet to the Zoning Board of Appeals office.

Before you request a zoning variance –

If you have been denied a building permit because of a zoning issue, a natural reaction is to apply to the Zoning Board of Appeals (ZBA) for a zoning variance. However, you should think carefully before going ahead with this.

First, the process can be expensive. The application to the ZBA requires that you submit a certified plot plan so that the ZBA can know the actual property dimensions that must be considered. A mortgage plan is not sufficient. The certified plot plan must be done by a registered surveyor, and can cost several hundreds – sometimes a thousand or more.

In addition, the applicant will be required to pay a filing fee. At the applicant's expense mailing notices to abutters (which involves a radius of 300 ft. or 400 ft.) by certified mail or certificate of mailing and pay for 2 legal ads to be placed in a city's local newspaper.

Second, you should realistically evaluate your chances of success. The ZBA is bound by Section 40, Chapter 10 of the General Laws of the Commonwealth. This guide states that a variance can only be granted if all three of the following conditions are met:

- 1. There must be something “wrong” or “unusual” about that property that creates the need for a variance. This can be something about the shape of the property, or the soil or topography.**
- 2. This “something wrong” with the property must result in a “hardship” unless a variance is granted. This is an area where many people are confused. A personal hardship – even a financial hardship – is not enough to justify a variance. A valid hardship must almost literally prevent the property from being used as it is zoned unless the variance is granted.**
- 3. The variance can be granted without “substantial detriment to the public good” or without detracting from the intent or purpose of the zoning law.**

Please be sure your situation meets all three of these conditions in order to insure that your application can be approved.



City of Marlborough Zoning Board of Appeals

140 Main Street
Marlborough, Massachusetts 01752
Tel. (508) 460-3768

Procedures/Information in Applying for a Zoning Board of Appeals (ZBA) Hearing

1. Building Dept. and/or official Board/Administrator – The applicant must fill out a Building Permit Application Form (if applicable). The Building Inspector and/or city official/Administrator will review your proposal and will deny said proposal. Only after a **written** denial can you apply for a hearing before the Zoning Board of Appeals. By law, a ZBA application must be filed within **30 days** of the date of the denial decision. The “decision” refers to the decision made by an administrative office, usually the Building Inspector, with reference to a permit or other zoning enforcement action.
2. **Application Form** – Application for a Hearing
 - Fill out the application form and return to the Zoning Board’s secretary for review.
 - If the application is complete, the applicant will submit 1 copy of the application (with plans) to the City Clerk’s Office to be stamped in.
 - Once the City Clerk’s office stamps it in, a stamped copy will be submitted to the Zoning Board of Appeals secretary for their files.
 - A filing fee is involved, as noted on the application. Make check **payable to the City of Marlborough** and the fee will be submitted to the Zoning Board of Appeals secretary. (Attach a copy of the denial letter from the Building Inspector and/or city official/administrator.)
3. The secretary will place two (2) legal ads in the Metro West Daily or the Marlborough Enterprise Weekly newspaper. The applicant is responsible for the payment of the two (2) legal ads which is billed directly by the newspaper to the applicant.
4. **Abutters Notification** – The applicant should go to the Assessor’s Office to request a recent certified list of abutters which covers a 300 ft. radius of the property in question. My office will send the applicant a copy of what the notice to abutters will read once a hearing date is decided upon.
5. The Applicant (or their agent or representative) is **responsible** for sending (with confirmation of delivery) copies of the notice of the hearing to all of the abutters on the certified abutters list at least two weeks (14 days) prior to the hearing date. Documentation of this mailing and/or delivery receipts for the abutter notices must be submitted to the Zoning Office at least 5 days prior to the hearing date. Types of proof of mailing: Certified Mail or Certificate of Mailing.
6. **Plan submittal:** Each application and petition to be the Board shall be accompanied by **(8) copies** of the following described plans:

The size of the site plan shall be 8 1/2 x 11 or 11 x 17 drawn to scale: (please make sure the plans is read able) it shall have a north point, names of streets, zoning districts, property lines and location of buildings on surrounding properties. The location and setbacks of all buildings to the lot lines, length of lot lines, and use of the property where a variance(s) is requested shall be shown accurately. The distance from buildings on adjacent lots shall be

shown to approximate scale. The lot coverage (the percentage of the lot covered by the principal and accessory buildings and all driveways and parking spaces) shall be shown. Entrances, exits, driveways and parking spaces shall be shown. The plans shall make clear what now exists and what is proposed. Also provide an interior floor plan (if relevant) showing any proposed changes.

7. After the hearing has taken place, it will be approximately fourteen (14) days before the Board's decision is filed with the City Clerk. The date of this filing is the official date of the decision. A **copy** of the filed decision will be mailed to the Applicant and to the abutters by the Zoning Board Secretary. (Note: This is not the recordable copy that you take to the Registry of Deeds)

8. There is a twenty (20) day appeal period that starts on the day after the decision is filed with the City Clerk. The appeal period must elapse before the City Clerk can certify the decision. During this appeal period, the Board's decision may be appealed to the appropriate appellate body. If an appeal is made, the City Clerk cannot certify the decision until the appeal has been fully adjudicated.

9. After the Board's approval of an Appeal has been certified by the City Clerk that the 20 day appeals period has ended, the City Clerk's office will mail to the applicant a stamped original and this is what **the Applicant must take to the Registry of Deeds to have recorded on their deed**. Until this recording has occurred, your Appeal will not take effect. **Documentation of recording must be provided to the Building Dept. before a building permit will be issued.**

Note: The Zoning Board of Appeals normally meet on Tuesday evenings. There are no set dates as to when the Board meets, only when there are cases to be heard. When the Board's secretary is provided with all the appropriate material for a hearing, it usually takes at least 25 plus days to schedule a hearing date.

Guidelines
Massachusetts General Laws Chapter 40A
Section 10

1. In order for the Zoning Board of Appeals to legally grant a variance, **all three findings must be made**, i.e. the Board **must** find:
 - a. a substantial hardship “financial or otherwise”
 - b. no substantial detriment to the public good
 - c. no substantial derogation from the intent and purpose of the zoning ordinance.

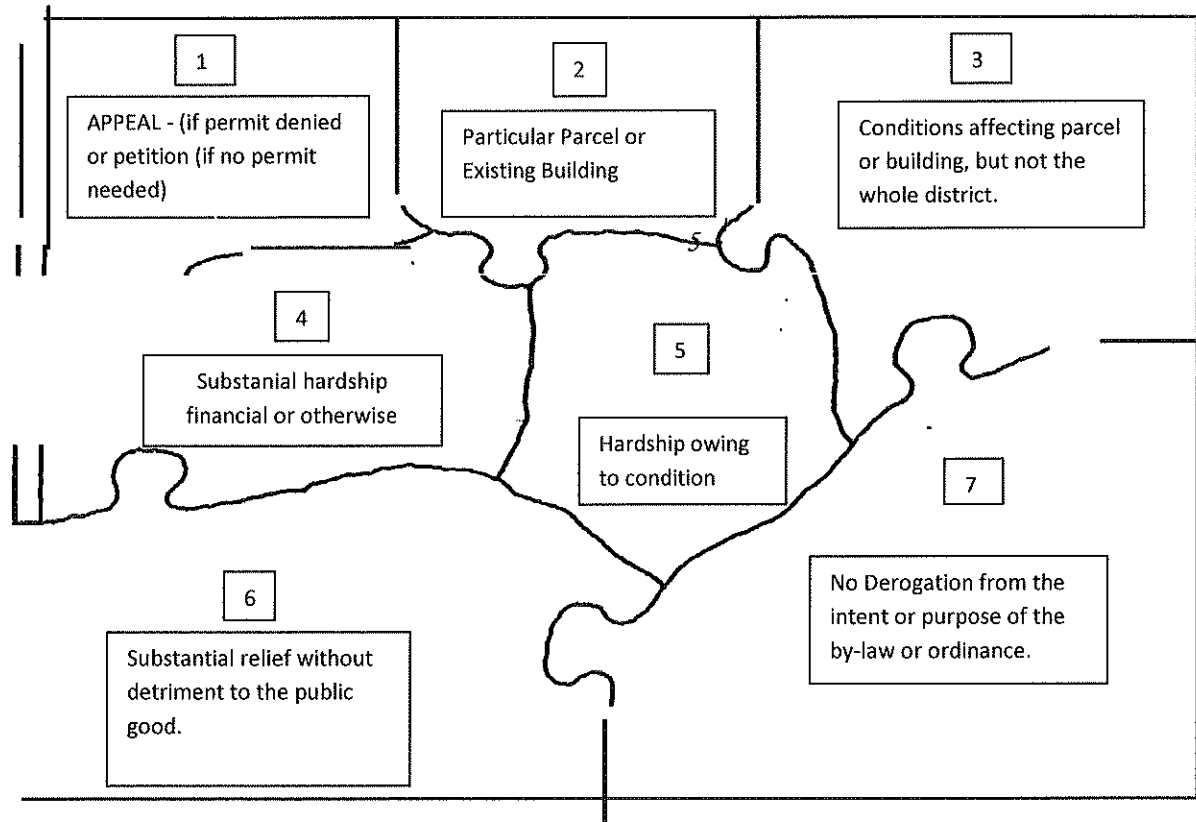
And that owing to the **soil conditions, shape or topography of the land or structures, but not affecting generally the zoning district in which it is located, a literal enforcement of the ordinance would bring about item (1) above.**

2. Regarding the definition of “**Hardship**” once the above factors are considered, “financial” hardship can be used for a grounds of relief. However, the “financial hardship” to the applicants or owners of the land in question, must be as a result of it’s unique conditions, not just the applicant’s or owner’s financial status.

3. Rights authorized by a variance (if one is granted) must be exercised within 1 year of the date the vote is submitted to the City Clerk's Office of such variance or such rights shall lapse. However, the permit granting authority in its discretion and upon written application by the grantee of such rights may extend the time for exercised of such rights for a period not to exceed six (6) months; and provided further, that the application for such extension is filed with such permit granting authority prior to the expiration of such one (1) year period.

THE VARIANCE PUZZLE

YOU NEED ALL THE PIECES



In addition to meeting all of the above mentioned pre-requisites when presenting your case before the Zoning Board of Appeals, please supply the Board with the following information which can be retained for our files:

1. If you are the owner or prospective purchaser of the property in question, please note this on the application.
2. If prospective purchaser, do you have a purchase and sale agreement with present owner?
3. Plot plan(s) or sketch(es) of the property showing location and size of existing and propose structure(s), driveway(s), etc., and lot lines.
4. Indicate approximate locations of existing and propose structure(s), driveway(s), etc. or abutting properties from the lot lines of the property in question.
5. Photos pertaining to the property in question and of the surrounding neighborhood could be helpful.
6. Any and all other information which may be useful to the Board will be appreciated.

If any help is required in the preparation of the application form in requesting a hearing for a variance or special permit, please contact the Zoning Board of Appeals office at 508-460-3768.



CITY OF MARLBOROUGH
ZONING BOARD OF APPEALS
Application for Variance or Appeal Hearing

Official Use :

Date Received : _____ City Clerk's # _____ ZBA Case # _____

Request for :

☐ Variance ☐ Appeal

Information :

Property Address _____ Zoning District _____ Map# _____ Parcel# _____

Applicant is: ☐ Owner ☐ Tenant ☐ Prospective Purchaser ☐ Other _____

I am the owner of the property and I have knowledge of, and consent to, this application.

Owner's signature _____ Date _____

Owner's name _____ Address _____

State _____ Zip _____ Phone# _____ E-mail _____

Applicant name _____ Address _____

State _____ Zip _____ Phone# _____ E-mail _____

Representative Name: _____ Company _____

Address _____

State _____ Zip _____ Phone# _____ E-mail _____

Describe below what is being requested, such as what is the proposed action, relief, or construction on the property.

Provide below all sections of the Zoning Ordinance (Chapter 650, Article(s), Section(s), Paragraph(s), Subsection(s)) which are pertinent to the Variance (see denial letter).

Variance

1. What is the soil condition, shape or topography of **YOUR** lot or structure which **DISTINCTLY** affects your lot, as distinguished from other lots in the zoning district which it is located.

2. What is the **HARDSHIP** that is **CAUSED** by the soil condition, shape or topography of your lot or structure stated above. **PERSONAL INCONVIENCE** is **NOT** a hardship. A hardship imposes a substantial financial penalty or directly affects your use of the land or structure as it is zoned.

3. State how the variance you are requesting, if granted, will not nullify or detract from the intent or purpose of the Zoning Ordinance.

4. State how the variance you are requesting, if granted, will not diminish the public welfare or well-being.

Appeal

State the specifics of the Appeal (use additional sheet if necessary).

Application Packet:

The applicant shall submit ten (8) copies of the application packet which shall contain sufficient information to illustrate and defend the applicant's case and as a minimum shall consist of the following:

- ☐ Completed Zoning Board of Appeals Application Form
- ☐ Abutters List certified by the Assessor's Office
- ☐ Copy of denial letter from City Official
- ☐ Certified Plot Plan prepared and stamped by a Massachusetts Registered Professional Land Surveyor. A mortgage plan is **NOT** a certified plot plan. The certified plot plan shall include:
 - ☐ Plan Size 8 1/2" x 11" or 11" x 17"
 - ☐ Plans drawn to accurate scale with north arrow
 - ☐ Owner names and street addresses of directly abutting lots
 - ☐ Name of streets and zoning districts.
 - ☐ Bearing and distances of subject property
 - ☐ Dimensions and property line setbacks of all structures on subject property
 - ☐ Location of driveways, parking areas and other impervious surfaces on subject property
 - ☐ Location of walls, curbing, major landscaping, fences on subject property
 - ☐ Location of easements, wetlands and floodplains on subject property, if applicable
 - ☐ Dimensions and property line setbacks of all proposed work
 - ☐ Lot Coverage (area covered by all impervious surfaces) existing and proposed
 - ☐ Location and property line setbacks of structures, fences, driveways etc. on abutting lots that are within fifteen (15) feet of subject property lines
- ☐ Site plans of subject property showing topography and drainage structures, if regrading of the site or rerouting of runoff is proposed or if property is in Floodplain and Wetland Protection District.
- ☐ Architectural plans of new or modified building structure, if applicable.

Filing Fee: Filing fees are based upon the proposed **USE** of the property:

- ☐ Residential Non--revenue bearing \$130.00
- ☐ Residential Revenue bearing \$250.00
- ☐ Business, Commercial or Automotive \$375.00
- ☐ Industrial, Limited or Full \$500.00
- ☐ Special Permit (Flood Plain and Wetland Protection District..... \$450.00

Hearing Request: I hereby request a hearing before the Zoning Board of Appeals regarding this application packet and I am aware that two (2) legal ads will be placed in the MetroWest Daily News or the Marlborough Enterprise Weekly newspaper which will be billed directly to me or my representative. I am further aware that I am responsible for sending copies of the Notice of Hearing to all the abutters on the certified list at least fourteen (14) days prior to the hearing date and that I will submit the receipts confirming this mailing to the zoning office seven (7) days prior to the hearing. Finally, I am aware that I am required to record the board's certified decision and the certified plot plan with the Registry of Deeds in order for it to take effect.

ZBA Case # _____

Applicant's signature: _____

Date: _____

Print name: _____

and/or

Representative's signature: _____

Date: _____

Print Name: _____

Official Use Only:

Received from applicant, the sum of \$_____ Check #

Signature of the agent of the Zoning Board of Appeals:

Date: _____

Susan Brown - Board Secretary
Department - Zoning Board of Appeals
140 Main Street
Marlborough, MA 01752
Tel# 508-460-3768 E-mail: sbrown@marlborough-ma.gov

The date and signature of the agent of the Zoning Board of Appeals will serve as certification as to when the **COMPLETE** application packet accompanied by the proper filing fee was filed with this office.